

**\*E-FILED 11/28/07\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

1-800 CONTACTS, INC.,

NO. C 07-80224 MISC JF (RS)

Plaintiff,

**REPORT AND  
RECOMMENDATION THAT  
CASE BE DISMISSED**

v.

MANILA INDUSTRIES, INC.,  
NETSPHERE, INC., et al.,

Defendants.

\_\_\_\_\_/


This miscellaneous action was initiated by Manila Industries, Inc., Netsphere, Inc., and Munish Krishnan (collectively “defendants”) to quash or modify a subpoena issued in this District in connection with underlying litigation against defendants pending in the Central District of California. Defendants were repeatedly contacted by court staff and advised that they were required to notice the motion to quash or modify the subpoena. Defendants never noticed the motion or otherwise responded to the messages left for them. On October 29, 2007, the Court issued an order to show cause why this action should not be dismissed for lack of prosecution, requiring defendants either to notice the motion or to appear on November 21, 2007. Defendants did neither.

It appears likely that defendants have not pursued this matter because the dispute regarding the subpoena was somehow resolved. It is unclear, however, why defendants failed to extend the simple courtesy of notifying the Court that the matter had been resolved, thereby avoiding the waste of Court resources that has resulted. In any event, defendants plainly have abandoned any attempt to

1 pursue this matter. Accordingly, it is recommended that this action be dismissed, without prejudice.

2 IT IS SO ORDERED.

3  
4 Dated: November 28, 2007

  
RICHARD SEEBORG  
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

2 John W. MacPete jmacpete@lockeliddell.com

3 Counsel are responsible for distributing copies of this document to co-counsel who have not  
4 registered for e-filing under the Court's CM/ECF program.

5 **AND A COPY OF THIS ORDER WAS MAILED TO:**

6 John W. MacPete, Esq.  
7 Locke Liddell & Sapp  
2200 Ross, Ste 2200  
Dallas, TX 75201

8 **Dated: 11/28/07**

**Richard W. Wieking, Clerk**

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10 **By:** \_\_\_\_\_  
11 **Chambers**

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**United States District Court**  
For the Northern District of California